In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 260

MARY GRANGER, PETITIONER

v.

ELLIOT L. RICHARDSON, SECRETARY OF HEALTH, EDUCATION AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

This action was instituted in the district court by petitioner to obtain review, pursuant to Section 205(g) of the Social Security Act (42 U.S.C. 405(g)), of the final decision of the Secretary of Health, Education and Welfare denying her a period of disability and disability insurance benefits. The district court granted the Secretary's motion for summary judgment on the ground that the administrative decision was supported by substantial evidence (Pet. App. A1–A13). In the course of its opinion, the court stated that "it would be sheer, unfounded speculation to insist that legal representation was necessary to insure that

plaintiff obtain a fair and impartial hearing" (Pet. App. A3).

On appeal, petitioner's sole contentions were that the administrative hearing was unfair because she had no counsel, and that she was misinformed by the hearing examiner as to her right to counsel (Pet. App. A14–A15). The court of appeals affirmed the district court's decision in an opinion concluding that petitioner was not prejudiced by the absence of counsel at the administrative hearing (Pet. App. A16–A17).

Although petitioner's attorneys have labeled their client an "illiterate moron" who is incapable of even the most elementary of human responses, the record clearly shows the contrary. Petitioner not only adequately described her physical and mental condition and vocational and educational background at the hearing, but quite persuasively argued that she was entitled to disability benefits under the Social Security Act (*e.g.*, Tr. 36, 37, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49). Moreover, the court of appeals found that the hearing examiner exercised special care to ensure that all of the evidence favorable to petitioner's contentions was adequately presented at the hearing and included in the record (Pet. App. A16). Indeed, subsequent to the hearing, the record was reopened to include the medical report of Dr. Robert A. Rauh, a specialist in internal medicine, and the psychometric and psychological evaluation of Dr. M. C. Beyerl, a psychologist. It was only after considering the medical reports of three doctors and the

psychological evaluation of Dr. Beyerl, along with the vocational evidence and claimant's own testimony, that the hearing examiner made his decision.

The court below held that the Social Security Act does not require, as petitioner urges (Pet. 9), that the Secretary must advise claimants of a right to employ attorneys on a contingent fee basis at hearings before the Social Security Administration (Pet. App. A17; 42 U.S.C. (Supp. V) 406(a)). On the contrary, a contingent fee might be administratively disapproved (see 20 C.F.R. 404.976(b)) or the case might be such that an attorney would not take it on a contingent basis. Thus, advice that petitioner could get representation on a contingent fee basis might be misleading. In short, petitioner received the hearing she was entitled to as a matter of due process, and denial of the disability benefits she sought was grounded on substantial evidence.

Accordingly, for the reasons summarized herein and more fully elaborated in the opinions of the courts below, on which we rely, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1970.

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